Filed 12/8/15 Melissa O. v. Superior Court CA5



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIFTH APPELLATE DISTRICT**

MELISSA O.,

Petitioner,

v.

THE SUPERIOR COURT OF TUOLUMNE COUNTY,

Respondent;

TUOLUMNE COUNTY DEPARTMENT OF SOCIAL SERVICES,

Real Party in Interest.

F072211

(Super. Ct. Nos. JV7600, JV7601)

# OPINION

## THE COURT*

ORIGINAL PROCEEDING; petition for extraordinary writ review. Donald I. Segerstrom, Jr., Judge.

Melissa O., in pro. per., for Petitioner.

No appearance for Respondent.

Sarah Carrillo, County Counsel, for Real Party in Interest.

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* Before Gomes, Acting P.J., Peña, J. and Smith, J.

Melissa O. in propria persona seeks extraordinary writ review of the juvenile court's dispositional orders denying her reunification services and setting a Welfare and Institutions Code section 366.26[1] hearing as to her eight-year-old daughter Shelby and one-year-old son Caden. We deny the petition.

## PROCEDURAL AND FACTUAL SUMMARY

Melissa has a long history of child neglect, stemming from her mental illness (bipolar disorder), drug abuse, and domestic violence. As a result, the juvenile court has intervened multiple times to protect her children. Shelby and Caden, Melissa's youngest children, are the subjects of these writ proceedings. In a prior dependency proceeding, Melissa lost custody of her son Logan. Her parental rights as to him were terminated in 2007, after she failed to reunify.

These dependency proceedings were initiated in April 2015, when Melissa and the children, then seven-year-old Shelby and one-year-old Caden, were found on the street in San Jose with no shelter. Melissa was holding Caden who was naked and shivering. Shelby was wearing dirty pajamas and her feet were bare. Shelby stated they had not eaten in days and had been staying in an abandoned building. The police took the children into protective custody and placed Melissa on an involuntary psychiatric hold.

The juvenile court exercised its dependency jurisdiction over the children and denied Melissa reunification services under section 361.5, subdivision (b)(10) and (11), following a contested dispositional hearing. The court found that Melissa failed to make reasonable efforts to address her domestic violence following the termination of her reunification services and her parental rights as to Logan. By that time, Shelby and Caden had been placed with Shelby's paternal aunt.

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**1** All statutory references are to the Welfare and Institutions Code.

Melissa's sole contention in her writ petition is that the juvenile court erred in denying her reunification services under section 361.5, subdivision (b)(10) and (11).[2] Under this statute, the court may deny reunification services to a parent who has failed to reunify with the minor's sibling or half sibling [hereafter "the sibling"] or whose parental rights to the sibling were terminated. Denial of services under these provisions requires the court to find the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the [sibling]." (§ 361.5, subd. (b)(10) & (11).)[3]

The evidence before the juvenile court when it ruled was as follows. In October 2004, the Tuolumne County Department of Social Services (department) received a report that Logan's father, Morris, held Melissa against her will at gunpoint and beat her with a gun at the family home. Then one-year-old Logan was asleep during the incident. Melissa admitted there was domestic violence in the home but refused to seek a restraining order against Morris because she loved him and needed her "'man to be a man.'" The department closed the case because Morris was sent to prison but continued

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[2] Melissa does not expressly cite section 361.5, subdivision (b)(10) and (11) as the grounds on which she asserts the juvenile court erred. However, she contends in essence that there was insufficient evidence of domestic violence to support the juvenile court's ruling. Because we liberally construe extraordinary writ petitions, we construe Melissa's contention as a challenge to the juvenile court's denial of reunification services under section 361.5, subdivision (b)(10) and (11). (See Cal. Rules of Court, rule 8.452 (a)(1) [liberal construction of writ petition].)

[3] Section 361.5, subdivision (b)(10) and (11) provides in relevant part:

"(b) Reunification services need not be provided to a parent ... described in this subdivision when the court finds, by clear and convincing evidence …: [¶] ... [¶]

"(10) That the court ordered termination of reunification services for any siblings … of the child because the parent ... failed to reunify with the sibling … after the sibling … had been removed from that parent ... and ... this parent ... has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling … of that child from that parent....

"(11) That the parental rights of a parent over any sibling … of the child had been permanently severed, and this parent ... has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling … of that child from the parent."

to investigate Melissa for domestic violence with Morris, substance abuse, and mental health issues until 2006, when it removed Logan from her custody. The removal was prompted after the department received a report that Melissa was arrested in Santa Clara County following a high speed chase with sheriff's deputies. She was arrested for possession of methamphetamine and hypodermic needles. Melissa was offered reunification services, including mental health and domestic violence counseling, but she did not utilize them. As a result, the juvenile court terminated her reunification services and, in 2007, terminated her parental rights as to Logan.

In May 2010, Melissa was transporting then two-year-old Shelby in the car when she was pulled over by the police. Officers found marijuana and a marijuana pipe in her possession. Melissa admitted smoking marijuana. She also admitted leaving Shelby in the care of Shelby's father, Richard, despite a restraining order prohibiting Richard from having contact with Shelby. Melissa said Richard "cooked," sold, and used methamphetamine and she suspected that Shelby was molested while in his care. Melissa was offered dependency drug court services and a domestic violence program, which she completed. The juvenile court returned Shelby to Melissa's custody and, in 2011, dismissed its dependency jurisdiction.

In April 2015, in the instant case, Shelby told a social worker that Melissa's live-in boyfriend C.S. "'pushed and hit'" her mother. She said once C.S. threw a "'weight'" at their car and hit her (Shelby) in the head. In July 2015, Melissa testified at the jurisdictional hearing that C.S. was living with her and they planned to buy or rent a house together in the near future. She said C.S. did not mean to hit Shelby with the weight but meant to hit her (Melissa). She also said she and C.S. did not fight in front of the children. They fought in the bedroom so the children could not see C.S. hit or push her. In August 2015, at the dispositional hearing, social worker Danielle Brouillette testified that Melissa gave Shelby her cell phone to play games. There were text messages from Melissa to C.S. and to Richard. In a message to C.S., following the

jurisdictional hearing, Melissa texted that he could no longer live with her. After he reacted angrily, she told him that she loved him and that it would be different "down the road." Melissa and Richard exchanged sexually explicit text messages and Melissa told Richard she loved him and that he was her "'bestie.'" Before that, Richard had talked about hurting her "violently."

After finding that Melissa failed to make a reasonable effort to address her domestic violence, the court found it would not be in Shelby and Caden's best interests to provide Melissa reunification services. The court denied Melissa services under section 361.5, subdivision (b)(10) and (11) and set a section 366.26 hearing.

This petition ensued.

**DISCUSSION**

When a dependent child is removed from parental custody, the court generally orders services for the family to facilitate its reunification. (§ 361.5, subd. (a).) Reunification services, however, need not be offered if any of the enumerated exceptions contained in section 361.5, subdivision (b), including subparts (b)(10) and (11), apply.

By enacting section 361.5, subdivision (b)(10) and (11), the Legislature intended to provide services only if they would facilitate the return of children to parental custody. (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.) When the court determines one of those provisions applies, the general rule favoring reunification is replaced with a legislative presumption that offering services would be "'an unwise use of governmental resources.'" (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.) In other words, "'the likelihood of reunification is so slim that scarce resources should not be expended on such cases.'" (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.) Inherent in this subdivision is "'a very real concern for the risk of recidivism by the parent despite reunification efforts.'" (*Ibid.*)

In evaluating whether a parent has made "a reasonable effort" to treat the problems that led to removal of the sibling, the court focuses on the extent of the parent's

efforts, before and after the department has intervened. (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.)

We review an order denying reunification services for substantial evidence. (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 196.) In so doing, we draw all reasonable inferences in favor of the juvenile court's order. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) On appeal, the parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Melissa contends the juvenile court erred in regarding domestic violence as a problem requiring treatment. She concedes that domestic violence counseling was offered in Logan's case and that she was too drug addicted to take advantage of the services. However, she points out she was never charged or convicted of domestic violence. Therefore, she argues the juvenile court misapplied the statute when it denied her services. We disagree.

As we stated above, the juvenile court's focus is on the reasonableness of the parent's efforts. The court does not, as Melissa contends, require evidence of criminal convictions to determine whether a parent has made a reasonable effort to address a domestic violence problem. Here, the evidence showed that Melissa engaged in ongoing and severe domestic violence over many years. Though she knew it jeopardized her ability to have custody of her children and despite having completed a domestic violence program, she continued to engage in dangerous romantic relationships. Further, she exposed her children to the violence these relationships engendered without any regard for the danger it posed to them. In effect, she demonstrated the kind of recidivism that the Legislature contemplated when it enacted section 361.5, subdivision (b)(10) and (11). The juvenile court echoed this sentiment when it stated, "I am quite certain that if I were to offer services to [Melissa], it would only be a matter of time [before] we would be back here in the same situation."

We conclude substantial evidence supports the juvenile court's order denying Melissa reunification services and deny the petition.

## DISPOSITION

The petition for extraordinary writ is denied. This opinion is final as to this court.